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13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 SAN FRANCISCO DIVISION

16 UNITED STATES OF AMERICA,

17 Plaintiff,

18 v.

19 FRANCISCO MIRANDA,

Defendant.

) CASE NO. 20-CR-452-EMC-1

) **UNITED STATES' SENTENCING
MEMORANDUM**

) Judge: Hon. Edward M. Chen
Date: August 10, 2023
Time: 9:00 a.m.

20
21 **I. INTRODUCTION**

22 Defendant Francisco Miranda (age 37) has pleaded guilty to Count One of the captioned
23 Indictment charging him with Conspiracy to Distribute Five Kilograms and More of a Mixture and
24 Substance Containing Cocaine. Dkt. 143. A wiretap investigation by the DEA in this case showed that
25 Miranda conspired with others to secure large quantities of cocaine from Mexico and Southern
26 California, which he in turn supplied to other Bay Area drug traffickers. PSR ¶ 12. DEA agents also
27 observed Miranda visiting a drug stash house in Mountain View, California that was later found to

1 contain over 10 kilograms of methamphetamine when it was searched on the day of Miranda's arrest.
 2 PSR ¶ 43.

3 II. SENTENCING GUIDELINES CALCULATIONS

4 As reflected in the Plea Agreement and the Presentence Report ("PSR"), the Sentencing
 5 Guidelines calculation for the defendant's offense is as follows:

- | | | |
|------|---|----|
| 6 a. | Base Offense Level, U.S.S.G. § 2D1.1(c)(5) | 30 |
| 7 b. | Acceptance of Responsibility, U.S.S.G. § 3E1.1: | -3 |
| 8 c. | Total Offense Level: | 27 |

9 See Dkt. 143 at 6; PSR ¶¶ 48-57. The parties reached no agreement on the defendant's criminal history
 10 category (CHC). The government agrees with U.S. Probation that the defendant is in criminal history
 11 category (CHC) II. PSR ¶¶ 60-61.¹ The sentencing guidelines range is 78-97 months (PSR ¶ 91) with a
 12 mandatory sentence of 120 months because the safety-valve criteria have not been met (PSR ¶ 91).

13 III. GOVERNMENT'S VIEW OF THE OFFENSE AND SECTION 3553 FACTORS

14 A. Legal Standards

15 The Court must impose a sentence sufficient, but not greater than necessary, to reflect the
 16 seriousness of the offense, promote respect for the law, and provide just punishment; to afford adequate
 17 deterrence; and to protect the public. 18 U.S.C. § 3553(a)(2); *United States v. Carty*, 520 F.3d 984, 991
 18 (9th Cir. 2008). The Guidelines are "the starting point and the initial benchmark" but are not binding.
 19 *Gall v. United States*, 552 U.S. 38, 49 (2007).

20 Section 3553(a) sets forth factors that the Court must consider in determining a sentence: (1) the
 21 nature and circumstances of the offense and the defendant's history and characteristics; (2) the purposes
 22 of sentencing; (3) the kinds of sentences available; (4) the Guidelines range for sentences; (5) any
 23 pertinent policy statements; (6) the need to avoid unwarranted sentencing disparities. 18 U.S.C.
 24 § 3553(a); *Carty*, 520 F.3d at 991.

25
 26 ¹ The sentencing date for the defendant's 2010 conviction was July 7, 2010. PSR ¶ 60. The offense
 27 conduct in this case began not later than March 29, 2020. PSR ¶ 11 n.1. Accordingly, pursuant to
 28 U.S.S.G. § 4A1.1(b), the prior sentence was not imposed more than ten years before "the
 commencement of the instant offense." *Id.*; see also U.S.S.G. § 4A1.2 appl. n. 7 ("the term
 'commencement of the instant offense' includes any relevant conduct.").

1 **B. Offense Conduct**

2 **1. The Drug Conspiracy**

3 Beginning around December 2019, the DEA learned of the Miranda's cocaine distribution
 4 through a wiretap of one of his customers—Defendant Raudel Macias, charged in Case No. CR 21-26-
 5 EMC). Dkt. 1 ¶ 15. On February 18, 2020, agents intercepted a call between Raudel Macias and
 6 Miranda in which the two discussed the quality of drugs that Raudel Macias was receiving. Other
 7 intercepted calls reference payments Macias was making to Miranda. *Id.* Still other calls discuss the
 8 appearance and potency of cocaine being supplied by Miranda. *See* CR 21-026, Dkt. 242 Declaration of
 9 Daniel Pastor, Exhibit 1 (15-Day Wiretap Report) (filed under seal).

10 Intercepted calls and texts from the wiretaps show that that Miranda and his co-defendants Jesus
 11 Alberto Rojas and Gelacio Perez were operating a wholesale cocaine trafficking and distribution
 12 operation that trafficked kilogram quantities of cocaine from Southern California to Northern California
 13 and resold to street-level distributors such as defendant Raudel Macias. PSR ¶ 12; Dkt. 1 ¶¶ 15-16.
 14 Based on intercepted calls between Miranda and his father in Mexico and between Miranda and his co-
 15 conspirators, the government believes that Miranda was a central figure in the cocaine trafficking
 16 operation who coordinated cocaine re-supply shipments with drug traffickers in Southern California.
 17 PSR ¶ 14. The DEA wiretap investigation of Miranda led to three significant seizures of cocaine and
 18 methamphetamine that occurred on April 9, 2020, June 14, 2020, and on November 17, 2020—when
 19 Miranda was arrested.

20 **2. April 9, 2020 Seizure of 5 Kilograms of Cocaine**

21 Around April 9, 2020, Miranda arranged to have his co-conspirator Jesus Alberto Rojas pick up
 22 5 kilograms of cocaine which was discussed in several intercepted calls and texts. Two days earlier, on
 23 April 7, 2020, DEA agents followed Miranda and Rojas to Garden Grove in Southern California and
 24 observed Miranda meeting with a Southern California drug supplier (Supplier-1) at a shopping center for
 25 about an hour. PSR ¶ 15; Dkt. 1 ¶ 19. After the meeting, Miranda and Rojas drove back to the Bay Area.
 26 *Id.* The next day—April 8, 2020—Miranda spoke to his father in Mexico about the April 7 Southern
 27 California drug meeting. PSR ¶ 16. Miranda told his father that he looked at the product and been told
 28

1 it was not that good. PSR ¶ 17. Despite the inferior quality of the cocaine, agents believe that Miranda
 2 had been instructed to purchase five kilograms of cocaine to generate continued cash flow² for the drug
 3 operation. *Id.* Miranda told his father that he would be sending someone to Southern California to pick
 4 up the “five” the next day. *Id.* Later, Miranda spoke to Rojas by phone, and they agreed that Rojas
 5 would travel to Los Angeles early the next morning. PSR ¶ 18.

6 On April 9, 2020, agents followed Rojas from Northern California to Garden Grove in Southern
 7 California where Rojas met with Supplier-1—the same drug supplier that agents had observed Miranda
 8 meet on April 7. PSR ¶ 19. Supplier-1 gave Rojas a large grocery bag. *Id.* After the meeting, Rojas
 9 drove back toward Northern California. Near Santa Maria, California on Highway 1, the California
 10 Highway Patrol (CHP) stopped Rojas for speeding. *Id.* Rojas gave officers consent to search his
 11 vehicle but then attempted to flee the scene before being apprehended. PSR ¶ 20. CHP officers found
 12 five bricks of cocaine inside Rojas’s vehicle. *Id.* The cocaine was later tested at a DEA laboratory and
 13 tested positive for cocaine with a net weight of approximately 4,985 grams. *Id.* Due to the pandemic
 14 health emergency, Rojas was released from state custody and subsequently fled to Mexico.

15 3. June 2020 Cocaine Seizure

16 In June 2020, the DEA learned that Miranda was seeking a re-supply of cocaine. PSR ¶ 21.
 17 Starting on June 12, 2020, agents intercepted calls in which Miranda arranged to obtain a shipment of
 18 cocaine from Southern California and to distribute that cocaine once it arrived in the Bay Area. PSR
 19 ¶¶ 22-25. For example, on June 12, 2020, agents intercepted a call between Miranda and a drug courier
 20 in which Miranda indicated that he may need the courier to make a trip the following day (PSR ¶ 22):

21 Miranda: “The people said perhaps in the morning it would be needed.”

22 USER-0962: “Early Tomorrow?”

23 Miranda: “Yes, if it happens, it would be around noon, so you can head out.”

24 USER-0962: “oh, ok. So you will want me to go tomorrow?”

25 Miranda: “Well, let them notify me first.”

27 ² The Covid-19 pandemic had begun in mid-March 2020. As with legitimate economic activity, the
 28 pandemic caused a major disruption in the flow of illegal drugs across the U.S.-Mexico border.

1 [Follow-up call later that night]

2 Miranda: "Can you come over here, and so you can head out around like at 7?"

3 USER-0962: "At 7 in the morning?"

4 Miranda: "But if you want to come right now so I can give you the, something." [probably
5 referring to purchase money]

6 The next day—June 13, 2020—Miranda was intercepted as he spoke to one of his customers and
7 discussed how much of the cocaine shipment would go to that customer. PSR ¶ 25. In coded language,
8 Miranda offered 3 kilograms of cocaine to the customer at \$28,500 per kilogram. *Id.* Later that day,
9 Miranda was intercepted as he spoke to his drug courier, who had arrived in Southern California, and
10 gave instructions in coded language indicating that the courier was picking up a total of 12 kilograms.
11 PSR ¶¶ 27, 32. Later, Miranda received an incoming text from the courier stating: "it is done, my man"
12 (meaning that the pick-up was completed and that the courier was on his way back). Dkt. 1 ¶ 33.
13 Miranda then reported to one of his customers that the shipment was on its way, and Miranda provided
14 the courier's phone number to the customer. Dkt. 1 ¶¶ 34-35.

15 On June 14, 2020, Miranda's co-defendant Gelacio Perez³ was intercepted on a call arranging to
16 sell some of the cocaine that had just arrived. Dkt. 1 ¶¶ 51-54. In addition, one of Miranda's customers
17 called Miranda and asked to return some of the product because of its poor quality (PSR ¶ 33):

18 USER-5322: "They told me to call you. It was already known that we were coming so that you
19 could exchange those, I think. I don't know if, I still haven't checked too well
20 there. I told my brother to take a good look and see if it was one or two. It had
21 come out kind of ugly."

22 In later calls, Miranda indicated that he had one left to exchange, which agents understood to
23 mean that he had one kilogram of cocaine remaining to sell. PSR ¶ 35. Miranda indicated that this
24 kilogram was marked "1A." PSR ¶¶ 37-38.

25 On June 14, 2020, agents surveilled a customer arriving at Miranda's stash house in Mountain
26 View, California. PSR ¶¶ 39-40. After the customer left, Hayward Police stopped the customer who
27

28 ³ Gelacio Perez evaded arrest and is now believed to be in Mexico.

1 was driving without a license. PSR ¶ 40. In the customer's vehicle, Hayward Police found roughly a
 2 kilogram of cocaine (997 grams net weight) with the letters "1A" stamped into the cocaine brick.

3 **4. November 17, 2020 Stash House Seizure of 10 Kilograms of
 Methamphetamine and Other Suspected Narcotics**

4

5 Federal agents arrested Miranda at his home on November 17, 2020. Agents seized about
 6 \$105,130 in cash from a dresser in his bedroom. PSR ¶ 42. During the arrest, Miranda attempted to
 7 destroy his mobile phone by breaking it in half. Dkt. 12 at 5. Agents also searched the Mountain View
 8 stash house that the drug customer had visited on June 14, 2020. PSR ¶ 43. At the stash house, agents
 9 found over 10 kilograms of methamphetamine as well as other suspected narcotics. *Id.* In addition,
 10 agents seized a stamp-press press used to imprint symbols on powder substances such as cocaine.

11 **C. The 3553(a) Factors**

12 The government agrees with the Probation Officer that the defendant's impoverished childhood,
 13 health conditions, and likely removal from the United States following his sentence are factors under 18
 14 U.S.C. § 3553(a) which the Court should consider. The government agrees with the Probation officer
 15 that Miranda's role as a whole drug supplier was a serious offense and that a significant sentence is
 16 warranted to punish and deter this conduct.

17 **IV. CONCLUSION**

18 Because the safety valve criteria have not been satisfied in this case, the government respectfully
 19 recommends that the Court impose a sentence of 120 months in prison, five years of supervised release,
 20 a special assessment of \$100, and the conditions recommended by U.S. Probation in the Presentence
 21 Report.

22
 23 DATED: August 3, 2023

Respectfully submitted,

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 25 ISMAIL J. RAMSEY
 United States Attorney

26 _____
 27 _____
 28 _____
 /s/ Daniel Pastor
 DANIEL PASTOR
 Assistant United States Attorney